THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition (M/S) No. 10 of 2006

Mangalwar S/o Khageshwar,
R/o Devnagar (Shakti Fram No.3)
Tehsil Sitarganj, District Udham Singh Nagar.

……. **Petitioner.**

Versus

1. State of Uttaranchal through Collector
   District- Udham Singh Nagar.
2. Tehsildar, Sitarganj, District – Udham Singh Nagar
3. Secretary, Ganna Vikas Samiti, Sitaraganj,
   District – Udham Singh Nagar.
4. Vidhan Mandal
5. Vivek Mandal

   Both Sons of Sri Charu Mandal, R/o Devnagar
   (Shakti Fram No. 3) Tehsil, Sitaraganj,
   District- Udham Singh Nagar.

…….. **Respondents.**

With

(1) Writ Petition (M/S) No. 571 of 2005

Amal Badhai S/o Amulya Badhai
R/o Dev Nagar(Shakti Ram No. 3)
Tehsil and P.S. Sitaraganj,
District- Udham Singh Nagar.

…….. **Petitioner.**

Versus

1. Collector/D.M. District Udham Singh Nagar.
2. Tehsildar, Sitarganj, District- Udham Singh Nagar
3. Sachiv, Ganna Vikas Samiti, Sitaraganj
4. Vidhan Mandal.
5. Vivek Mandal.

   Both Sons of Sri Charu Mandal, R/o Village Devnagar
   (Shakti Fram No.3) Tehsil and P.S.. Sitarganj,
   District – Udham Singh Nagar.

…… **Respondents.**

(2)Writ Petition (M/S) No. 68 of 2006

Deen Bandhu Varkandas S/o Sri Ganesh Varkandas
R/o Rudrapur, (Ranjeet Nagar No.4) Jail Camp No. 4
Tehsil Sitarganj, District – Udham Singh Nagar.

……. **Petitioner.**

Versus

1. Collector/D.M. /A.D.M. Finance,
District-Udham Singh Nagar.
2. Sub Divisional Magistrate/S.D.M.
Deputy Collector, Khateema,
District – Udham Singh Nagar.
3. Tehsildar, Sitarganj, District Udham Singh Nagar.
4. Sachiv, Ganna Vikas Samiti, Sitarganj
District – Udham Singh Nagar.
5. Giren Mandal,
6. Niren Mandal,
Both Sons of Sri Hemnath Mandal
R/o Jagatpura, Rudrapur, P.S. Rudrapur
District – Udham Singh Nagar.

…… **Respondents.**

Sri B.D. Pande, Sri H.C. Pathak and Sri K.S. Bora, learned counsel for the petitioner.
Sri Nand Prasad leaned counsel for the State/respondent.
Sri S.K. Mandal and Sri B.S. Adhikari learned counsel for he respondents.

Date February 21, 2006.

Hon'ble B.S. Verma, J.

In all the three writ petitions, the petitioners have challenged the recovery certificate/citation issued by the Tehsildar, Sitarganj and common question is involved in determination in the writ petitions, therefore, they are being heard and decided together.

In Writ Petition No. 10 of 2006, the petitioner has prayed for setting aside the recovery citation dated 17.07.2005 issued Rs. 68,183/- plus recovery charges. In Writ Petition No. 571 of 2005, the petitioner has prayed for setting aside the recovery citation dated 10-5-2005 issued against him for recovery of Rs. 84,213/-along with other charges. In Writ Petition No. 68 of 2006, the petitioner has challenged the recovery citation issued against him for recovery of Rs. 84,411.92 plus other charges.

Brief facts giving rise to the writ petitions are that according to the petitioners, they had not taken any loan rather two

persons of their village, namely, Vidhan Mandal and Vivek Mandal, Sons of Charu Mandal in the first two writ petitions and Sri Giren Mandal and Sri Niren Mandal, sons of Hemanth Mandal in the last writ petition, who have been arrayed as respondent nos. 4 and 5 in the first two writ petitions and respondent nos. 5 and 6 in the last writ petition respectively, took certain amount as agriculture/fertilizer loan by taking he benefit of their innocence and by playing fraud in their names behind their back form Ganna Vikas Samiti, Sitarganj, district Udham Singh Nagar. It is alleged that they came to know of the loan when a notice from the said Ganna Vikas Samiti was received by them and they made inquiry regarding the notice. Then it was revealed that the aforesaid respondents had taken loan in the names of the petitioners. Thereafter the petitioners made a representation to the Additional District Magistrate for making an inquiry into the matter and the Tehsildar Sitarganj was ordered to make an inquiry into the matter but nothing was done in the matter and the inquiry is pending so far. It is alleged concluding the inquiry, the impugned recovery citations have been issued, which are wrong, defective, incorrect and illegal.

I have heard learned counsel for the parties and have perused the entire material on record. The main grievance of the petitioners is that they had not taken any loan and they disown the liability of loan.

On the other hand, Sri S.K. Mandal and Sri Birendra Singh Adhikari, learned counsel appearing on behalf of the contesting respondents, have submitted that the petitioners have taken the loan from the Society concerned.

It is admitted to the parties that Recovery Citations have been issued against the petitioners for recovery of the loan amount as arrears of land revenue and Recovery Officer, i.e.

Tehsildar is proceeding in the matter under Chapter X of the U.P. Zamindari Abolition and Land Reforms Act.

It was argued by the learned Standing Counsel Sri Nand Prasad that the petitioners have alternate remedy to file a civil suit for recovery if they deposit the recoverable amount under protest as provided under Section 287-A of the U.P. Zamindari Abolition and Land Reforms Act.

Section 287-A of the Zamindari Abolition and Land Reforms Act is being reproduced below for ready reference:

"287-A. ***Payment under protest and suit for recovery*** *(1) Whenever proceedings are taken under this Chapter against any person for the recovery of any arrears of land revenue or for the recovery of any sum of money recoverable, as arrears of land revenue, he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment, the proceedings shall be stayed and the person against whom such proceedings were taken may sue the State Government in the civil court for the amount so paid, and in such suit, the plaintiff may, notwithstanding anything contained in section 278, give evidence of the amount, if any, which he alleges to be due form him.*

(2) No protest under this section shall enable the person making the same to sue in the civil court, unless it is made at the time of payment in writing and signed by he persons or by an agent duly authorised in this behalf."

In these writ petitions, admittedly, the fact is disputed whether the petitioners had taken loan or the respondent nos. 4 and 5 in the first two writ petitions and respondent nos. 5 and 6 in Writ Petition No. 68 of 2006 had taken the loan from Ganna Vikas Samiti Sitargang. It is a disputed question of fact and it is well settled that the disputed question of fact cannot be decided in Writ Petition.

Since a disputed question of fact is involved in the writ petition and on the ground of alternate remedy available to the petitioners, all the three writ petitions are herby dismissed in-

limine. However, the petitioners may pursue the matter before the appropriate Forum as provided under the law.

Interim order dated 10-6-2005 passed by this Court in W.P.M.S. No. 571 of 2005, Amal Badhai Vs. Collector and others, is vacated.

(B. S. Verma, J.)

RCP